

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

VOLTERRA SEMICONDUCTOR  
LLC,

Plaintiff,

V.

MONOLITHIC POWER SYSTEMS,  
INC.,

Defendant.

Redacted - Public Version

C.A. No. 19-2240-CFC-SRF

**REPLY BRIEF IN SUPPORT OF DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT (NO. 2) OF NO INDUCED OR WILLFUL  
INFRINGEMENT FOR THE ’408 AND ’955 PATENTS**

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## **I. INTRODUCTION**

Volterra identified no evidence MPS knew of either '408 or '955 patent prior to the complaint, so MPS's motion should be granted. In opposition, Volterra identifies no new facts showing actual knowledge, but instead debates how its scanty presented evidence should be construed. This is a smokescreen of speculation, not an actual factual dispute. Volterra cannot meet its burden to establish that MPS induced infringement or willfully infringed the '408 or '955 patents without knowledge of these patents.

## **II. ARGUMENT**

### **A. No Evidence Shows MPS Had Actual Pre-Suit Knowledge of the '408 and '955 Patents**

#### **1. Dr. Zhou's Dissertation Cannot Demonstrate MPS's Pre-Suit Knowledge**

Dr. Zhou's dissertation does not show MPS had actual knowledge because it was too remote in time, not written while Dr. Zhou was an employee, and the patents-at-issue *did not exist* when it was written.

Volterra asserts that the facts are similar to *Kaneka Corp. v. SKC Kolon PI, Inc.*; not so. 198 F. Supp. 3d 1089 (C.D. Cal. 2016). In *Kaneka*, the defendant's employee searched for patents thirteen years prior, for a prior employer; but that "prior employer" was actually a predecessor of the defendant. 198 F. Supp. 3d 1089, 1107. Further, the patent-at-issue *existed* when the search was conducted—here they

did not. *Id.*, 1107, fn. 1. Similarly, Volterra’s citations to *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.* involved an *employee* who analyzed papers from an author that *the defendant company knew* had patented work. 807 F.3d 1283, 1300 (Fed. Cir. 2015). At the time, Dr. Zhou was a PhD student with no affiliations to MPS and had no reason to look for these patents.

Volterra acknowledges the patents were nonexistent, but asserts that “the dissertation does not predate the publication of the parent application.” D.I. 303, p. 8. However, “the patent *must exist* and one *must have knowledge* of it.” *State Industries, Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985) (emphasis added). To find knowledge, Volterra assumes Dr. Zhou knew of the parent application’s existence—which his dissertation never cited—and also tracked it for four years after his dissertation presentation to learn about the child patents. This is a bridge too far.

## **2. Volterra’s Remaining Allegations Regarding Dr. Zhou Are Similarly Insufficient**

Volterra asserts that Dr. Zhou’s conversations with third parties at MPS are sufficient to prove that MPS had pre-suit knowledge of the patents-at-issue. However, Volterra cannot identify any conversation in which the ’408 or ’955 patents were raised (because they were not). Additionally, the [REDACTED] conversations rely entirely on an inadmissible hearsay. D.I. 274, p. 3.

Furthermore, Dr. Zhou's role at MPS is irrelevant. Dr. Zhou helped develop the MP2888A controller in a managerial role, but the MP2888A controller does not contain any coupled inductors nor is it especially made or adapted for use in any alleged infringement of the Asserted Patents. *See* D.I. 281-07, p. 39, 53.

### **3. MPS's Knowledge of the '986 Patent Cannot Be Used to Attribute Knowledge of the '408 and '955 Patents**

Volterra claims that the '986 patent can be used to demonstrate MPS's knowledge of the '955 and '408 patents. It cannot. In *Simo Holdings, Inc. v. H.K. UCloudlink Network Tech. Ltd.*, the court found that knowledge of a "more than 'somewhat similar'" patent allowed the jury to reasonably infer pre-suit knowledge of the patent-at-issue; but the "somewhat similar" patent was the *parent*. *See* 396 F. Supp. 3d 323, 334 (S.D.N.Y. 2019). Conversely, the '986 patent is not just *unrelated* to the '955 and '408 patents, it is prior art.

While MPS's in-house counsel conducted a prior art search for the '986 patent, MPS could not be expected to look for other Volterra patents outside of the '986 patent. D.I. 281-11, at 63:02-15; D.I. 281-13. MPS's invalidity investigation for the '986 patent looked *backward* in time, and would not have uncovered later issued patents. Volterra's assertion that MPS must have known of the '408 and '955 patents because they appear in the citing references section of Google Patents also cannot show knowledge, as it imposes an impossible burden and assumption that every document link must be examined. As stated in its opening brief, MPS does not

have a duty “to seek out every reference.” *Suprema, Inc. v. Int’l Trade Comm’n*, 626 F. App’x 273 at \*13-\*14 (Fed. Cir. 2015).

#### **4. The Remainder of Volterra’s Interpretations of the Evidence Does Not Support Its Allegations of Pre-Suit Knowledge**

Rather than provide more specific details regarding MPS’s alleged knowledge of the patents-at-issue, Volterra provides a bulleted list of speculation. But all fail to provide evidentiary support for Volterra’s allegations of knowledge:

- Volterra alleges conversations with the third party coupled inductor manufacturer, [REDACTED] show knowledge. However, [REDACTED] See D.I. 307-8, at DAL0000001-004. Volterra provides no further evidence that [REDACTED] discussed any specific patent with MPS, including either the ’408 or ’955 patent.
- Volterra claims [REDACTED] communications with MPS indicate that MPS had knowledge of the ’408 and ’955 patents. But the December 11, 2018 email Volterra identified from [REDACTED] does not notify MPS of the ’408 or ’955 patents. See D.I. 275, paras. 6-7.
- Volterra claims the list of IP Maxim sent NVIDIA proves that MPS had knowledge of the ’408 and ’955 patents. But Maxim sent *NVIDIA* (not MPS) this list. See D.I. 274, p. 12.
- Volterra claims that the invalidity opinion of MPS’s in-house counsel, Mr. Roland Tso, for the ’986 patent is sufficient to demonstrate knowledge of the ’955 and ’408 patents. But Mr. Tso only looked at the cited references listed on the ’986 patent face (which did not include the ’955 and ’408 patents) and did a Google search on the words “coupled inductors.” See D.I. 307-13, 54:12-56:21.
- Volterra cites to Mr. Samsi’s testimony that Mr. Tso looked at a “bunch of patents” as evidence that MPS must have known of the ’408 or ’955 patents, but Mr. Samsi clarified that he was unsure

whether Mr. Tso reviewed “a bunch of patents” or “a bunch of prior art references.” *See* D.I. 307-13, 158:05-23. Mr. Tso testified that he did not know of the ’408 and ’955 patents until Volterra filed its complaint. D.I. 281-11, 73:14-24; 76:05-15.

**B. No Evidence Shows MPS Had Constructive Pre-Suit Knowledge of the ’408 and ’955 Patents**

Volterra makes gross mischaracterizations of MPS’s patent policy towards its employees to allege that MPS was willfully blind to the ’408 and ’955 patents, taking the testimony of former MPS employee, Mr. Rohan Samsi, out of context. Volterra asserts that [REDACTED]

[REDACTED] D.I. 303, p. 12. However, as Mr. Samsi explains, [REDACTED]

[REDACTED] D.I. 307-07, 60:20-24. MPS encourages its employees to “ [REDACTED]

[REDACTED] *Id.*, 60:25-61:09. As Mr. Samsi testified, [REDACTED]

[REDACTED] *Id.*, 144:20-145:03.

MPS’s did not encourage its employees to be willfully blind, but rather to consult the professionals. *See SRI Int’l v. Cisco Sys., Inc.*, 930 F.3d 1295, 1309 (Fed. Cir. 2019).

**C. MPS Had No Knowledge It Infringed Any Asserted Patent, and Did Not “Waive” This Issue**

MPS indeed disputes that it had knowledge of infringement regarding all *three* of the asserted patents. This motion is directed towards knowledge of the '408 and '955 patents specifically. As this knowledge is a foundational requirement, there can be no inducement. Not moving on knowledge of infringement cannot be considered as a waiver of the infringement scienter issue.

**III. CONCLUSION**

For the above reasons, MPS's Motion should be granted.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to the Court's November 6, 2019 Standing Order, I hereby confirm that this brief complies with the type and number limitations set forth in the Standing Order. I certify that this document contains 1,318 words, which were counted using the word count feature in Microsoft Word, in 14-point Times New Roman font. The word count does not include the cover page, tables, or the counsel blocks.

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